

REMARKS

I. Status and Disposition of the Claims

In the instant application, claims 1-27 and 29-30, of which claims 1, 12, 23, 24, 25 and 30 are independent, are pending and under consideration on the merits.

In the Final Office Action¹ mailed December 8, 2009, the following actions were taken:

1) Claims 1-4, 6, 8-15, 17, 19-25, and 29-30, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith et al. (U.S. 2004/0225507) (hereinafter *Smith*) in view of Wilson et al. (U.S. 2002/0133387) (hereinafter *Wilson*); and

2) Claims 5, 7, 16, 18, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and *Wilson* in further view of Arunapuram et al. (U.S. 2002/0019759) (hereinafter *Arunapuram*).

II. Amendments to the Claims

In this Amendment, Applicant amends claims 1, 3, 9-12, 14, 20-25, 27 and 30. Support for the amendments to claims 1, 12, 23, 24, 25, and 30 can be found, for example, at paragraphs 027, 039, 051-052, and 060 of Applicant's Specification. For example, in one exemplary embodiment:

“planner 104 provides to scheduling engine 114, a list of sources locations, material availability dates, and (if applicable) quantities of goods at each source location. Planner 104 may then select a source location based on, for

¹ The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

example, earliest MAD [material availability date] (step 720). Planner 104 then provides the source location to scheduling engine 114. . . for scheduling.”

Applicant’s Specification at para. 060; see *also id.* at para. 039. Amendments were made to claims 3, 9-11, 14, 20-22, and 27 to ensure proper antecedent basis in view of the aforementioned amendments to the independent claims. Accordingly, no new matter is introduced by these amendments.

III. Response to Rejections

A. Rejection of claims 1-4, 6, 8-15, 17, 19-25, and 29-30 under 35 U.S.C. §

103(a)

Applicant respectfully traverses the rejection of claims 1-4, 6, 8-15, 17, 19-25, and 29-30 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established. Applicant’s amended claim 1 recites, *inter alia*, “determining, by a source, availability dates of the good at a set of source locations comprising origins for the good” and “selecting a selected source location, by a planner module, from the set of source locations based on the availability dates of the good at the set of source locations.” Neither *Wilson* nor *Smith*, alone or in combination, discloses or suggests these features recited in Applicant’s claim 1.

At most, *Smith* merely discloses identifying a single source location based on zip code or brand. See *Smith* at para. 0034 (“the... supplier is selected based on the zip code and brand”). In addition, the Final Office Action admits that *Smith* discloses that “selecting . . . is based on the date the goods leave the source, not the availability date of the good at the source location” (See Final Office Action at 3), and therefore

recognizes that *Smith* does not disclose “selecting a selected source location, by a planner module, from the set of source locations based on the availability dates of the good at the set of source locations,” as recited in amended claim 1. *Wilson* does not make up for this deficiency of *Smith* because *Wilson* also merely discloses determining availability at a single source location, rather than “determining, by a source, availability dates of the good at a set of source locations comprising origins for the good,” and then “selecting a selected source location, by a planner module, from the set of source locations based on the availability dates of the good at the set of source locations,” as recited in Applicant’s amended claim 1. See e.g., *Wilson* at FIG. 5A. The Final Office Action also notes this deficiency of *Wilson*. See Final Office Action at 6.

As *Wilson* does not cure the deficiencies of *Smith*, combining the references would not render Applicant’s claim obvious. For at least this reason, Applicant’s amended claim 1 and its dependent claims 2-4, 6, and 8-11 are allowable in view of *Smith* and *Wilson*. Claims 12, 23, 24, 25, and 30, while of different scope, recite similar elements, and those claims as well as their dependent claims 13-15, 17, 19, 22, 27, and 29 are allowable for at least the same reasons as stated above with respect to claim 1. Therefore, the rejection of claims 1-4, 6, 8-15, 17, 19-25, and 29-30 under 35 U.S.C. § 103(a) should be withdrawn.

B. Rejection of claims 5, 7, 16, 18 and 26 under 35 U.S.C. § 103(a)

Claims 5, 7, 16, 18, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and *Wilson* in further view of *Arunapuram*. See Final Office Action at 5. Claim 27 was rejected based on Official Notice that “the use of Rush orders

are well known” and therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify *Smith* and *Wilson*. See Final Office Action at 4. Applicant respectfully disagrees with and traverses both of these rejections.

The elements of claims 1, 12, and 25 are incorporated by reference into claims 5, 7, 16, 18, 26, and 27, respectively. As noted above, claims 1, 12, and 25 are not taught or suggested by *Smith* or *Wilson*. Neither Official Notice of Rush orders nor *Arunapuram* overcome the aforementioned deficiencies of *Smith* and *Wilson*. Therefore, whether or not rush orders comprise an obvious feature, or whether or not selecting a trip based on dangerous goods or cost information was disclosed in *Arunapuram*, incorporating these features into *Smith* and *Wilson* would not result in the invention recited in claims 5, 7, 16, 18, 26, and 27 as a whole.

For at least the reasons noted above, claims 5, 7, 16, 18, 26, and 27, which recite similar elements rejected under the same rationale, are allowable under 35 U.S.C. § 103(a) and the rejection should be withdrawn.

IV. Conclusion


In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 3, 2010

By: 
Rachel L. Emsley
Reg. No. 63,558